

MEMORANDUM OF UNDERSTANDING

between

CALTRANS DISTRICT 5

and

CALIFORNIA DEPARTMENT OF FISH AND GAME

regarding

ROUTINE MAINTENANCE ACTIVITIES IN SANTA BARBARA COUNTY

This Memorandum of Understanding (MOU) by and between the California Department of Fish and Game, hereinafter called the "Department", and the CALTRANS DISTRICT 5, hereinafter called the "CALTRANS", is for the purpose of delineating and defining routine maintenance activities for culverts in improved and unimproved channels and shall not require further notice and agreement in compliance with Section 1601 of the Fish and Game Code.

WHEREAS, Section 1601 of the Fish and Game Code allows the Department to propose reasonable modifications to certain CALTRANS construction projects as would allow for the protection and continuance of existing fish and wildlife resources that may be substantially adversely affected by that construction project; and

WHEREAS, with regard to any project that involves routine maintenance and operation of vegetation clearing within improved and unimproved channels in Santa Barbara County, notice to, and agreement with, the Department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources change, and the resources are adversely affected by the activity conducted under the agreement; and

WHEREAS, it is essential that CALTRANS perform routine maintenance activities within improved channels to maintain the designed capacity of the channel(s), to protect the CALTRANS's investment, and to prevent loss of life and property,

WHEREAS, consistent with the policies of California Fish and Game Code Section 1600 et seq., the protection and conservation of the fish and wildlife resources of California are of utmost public interest, and fish and wildlife conservation is a proper responsibility of the State; and

WHEREAS, in order to avoid future conflicts, it is mutually beneficial to delineate and define routine maintenance, to establish procedures to expedite maintenance activities, and to provide for the protection and continuance of the existing fish or wildlife resources during such maintenance activities; and

WHEREAS, nothing in this agreement shall constitute a waiver of any future or current Department claims to the use and maintenance of natural conditions under the public trust doctrine; nor constitutes permission to take any State or Federally listed species under the State or Federal Endangered Species Act; and

WHEREAS, nothing in this agreement shall constitute a waiver of CALTRANS's claimed rights to maintain and operate the culverts solely for the protection of the roads under its purview without a 1601 agreement; and

WHEREAS, this MOU is not intended to affect CALTRANS's rights under Fish and Game Section 1601 (f) to undertake emergency work necessary to protect life or property.

NOW THEREFORE, the Department and CALTRANS agree as follows:

I. GENERAL PROVISIONS

- A. If the work as described in this MOU is substantially changed, or conditions affecting fish and wildlife resources substantially change, or such resources are adversely affected by the activity conducted under this MOU, a separate Notification and Agreement will be required pursuant to Fish and Game Code Section 1601.
- B. This MOU only applies to CALTRANS work in Santa Barbara County. It does not apply to work conducted by contract for CALTRANS.
- C. Except where otherwise stated, all work shall be conducted only between April 15 and October 15 of each year, except emergency work done pursuant to Fish and Game Code Section 1601. For the purpose of this section, the term "emergency" is defined by Public Resources Code Section 21060.3. Work to be conducted in dry streams after October 15 shall be at the discretion of the Department.
- D. Equipment shall not be stored within 50 feet of a channel to avoid releasing petroleum hydrocarbons into the channel. When operations are completed, any excess materials or debris shall be removed from the work area. No rubbish shall be deposited within 150 feet of the high water mark of any stream or lake.
- E. No herbicides shall be used in any stream channel without prior written approval from the Department. Such use shall conform to all applicable State and Federal regulations.
- F. No work shall be conducted in a flowing stream. All work shall be conducted in a dry streambed. Any work conducted in a flowing stream will require a separate Notification and Agreement.
- G. Except as otherwise specified, no heavy equipment shall be used in the streambed without prior written approval and according to conditions set by the Department.

II. AUTHORIZED ACTIVITIES

The following shall constitute routine operation and maintenance and shall not require further notice or fees to, nor Agreement with, the Department subsequent to this initial notification and Agreement:

- A. Control of weeds and grasses by mowing on the stream banks. This activity shall occur between July 15 and October 15 of each year.
- B. Routine removal of minimum vegetation to insure proper functioning and operation of culverts, pipes, bridges, and other existing water control facilities or structures necessary for public health, safety, and benefit. Backhoes and tractors may be used to pull or lift cut vegetation from the streambed if the backhoe or tractor is operated from the top of the bank. All such routine vegetation removal shall be limited to the stream bottom and shall extend no further from the existing control facility or structure than necessary to facilitate ready stream flow.
- C. Remove woody or herbaceous vegetation with hand tools in the stream bottom. The stream bottom is defined as the toe of one bank to the toe of the other bank. CALTRANS shall not remove vegetation with a diameter breast height of 2 inches or greater from the stream from March 15 to July 15 to avoid impacts to nesting birds. However, non-native

plants such as castor bean, Arundo (bamboo), tamarisk, Eucalyptus, tree tobacco, pampas grass, pepper tree and palm can be removed at any time of year provided no nesting birds occur or could possibly be impacted. If the non-native vegetation is to be removed between March 15 and July 15, CALTRANS shall have a qualified biologist survey the area to ensure no impacts to nesting birds occur. It is recommended these exotic species are removed from as many streams as possible.

Any exotic species removed shall be disposed of at an approved disposal site. The Department recommends the immediate application of an herbicide approved for use in an aquatic environment, such as "Rodeo", to the stumps of the exotic species.

- D. Removal of fallen trees, branches and associated debris.
- E. Removal of soil, debris, rubbish and other non-living material from concrete lined channels and culverts.
- F. Cleaning, repair and replacement of existing flap gates or other existing water control devices.
- G. Replenishment of clean rock rip rap in previously rip rapped areas to maintain bank stabilization. Placement of materials shall be done without operating heavy equipment in the streambed or channel. If replacement requires removal of riparian vegetation, prior written approval shall be obtained from the Department.
- H. When intermittent stream channels are dry, heavy equipment may be used in the channels to remove silt, debris or rubbish provided bank slope vegetation is left undisturbed and all material removed is placed where it will not reenter the stream. Any activity which requires disturbance to bank slope vegetation or which requires removal of substrate greater than 12 inches in depth shall require prior written approval with the Department. Rock, cobble and gravel sections of the streambed shall not be disturbed.

III. REPORTING REQUIREMENTS

- A. CALTRANS shall provide a written report to the Regional Manager, Region 5 of the Department, discussing the maintenance activities completed during the preceding quarter. The report shall be submitted quarterly. A maintenance project is defined as one or more of the maintenance activities identified in this MOU that has been performed during any given reporting period. Due dates for submitting quarterly reports shall be as follows:

May 15 - for first quarter reports (January to March)
August 15 - for second quarter reports (April to June)
November 15 - for third quarter reports (July to September)
February 15 - for fourth quarter reports (October to December)

IV. FEES

A quarterly fee shall be paid to the Department on the date that the quarterly reports are submitted. The fee amount shall be in accordance with the current fee schedule, as published by the Department for work performed under a Memorandum of Understanding, based on the number of maintenance projects completed within a calendar year.

California Code of Regulations, Title 14, Section 699.5 establishes fees for projects subject to Fish and Game Code Section 1601. The category for 1601 ROUTINE MAINTENANCE ACTIVITIES by public agencies specifies an initial \$ 132.00 non refundable application fee, with

additional charges for each maintenance project, where a "project" is defined as work that falls within the agreed scope of maintenance work, as follows:

- (a). \$ 111.00 for each of the first 20 maintenance projects,
- (b). \$ 88.00 for each of the next 21 through 40 maintenance projects,
- (c). \$ 67.00 for each of more than 40 maintenance projects.

California Fish and Game Code Section 1607(b) currently establishes fee limitations subject to legislative review as follows: "fees in an amount not less than fifty dollars (\$50) or more than two thousand four hundred dollars (\$2400)".

VI. AMENDMENT AND TERMINATION

This MOU cannot be amended or modified in any way except by a written agreement duly executed by the Department and CALTRANS. Any proposal for amendment or modification must be delivered for review and approval by the Regional Manager or the official designee of the Regional Manager.

This MOU may be terminated by either party upon 30 days written notification to the other party. Upon termination, the activities of the parties shall be governed by the applicable provisions of California Fish and Game Code Section 1601.

VII. ENTIRE AGREEMENT

This MOU, along with the exhibits attached hereto, constitutes the entire Agreement and understanding between the Department and CALTRANS for routine maintenance activities. This Agreement supersedes all prior and contemporaneous routine activity agreements, representations, or understandings, if any, whether oral or written.

VIII. OTHER ENVIRONMENTAL LAWS, STATUTES, AND REGULATIONS

- A. This MOU does not constitute any form of authorization, permit, biological opinion, or compliance with the requirements and provisions of any other statute, regulation, requirement, or ordinance respecting the protection or conservation of fish and wildlife resources. Those statutes include, but are not limited to, the California Environmental Quality Act, Clean Water Act, the California Endangered Species Act, or the Federal Endangered Species Act.
- B. This Agreement shall become effective beginning on the date of the Department's signature, and shall terminate on December 31, 2002.
- C. CALTRANS shall request a renewal of this Agreement prior to its termination date. Each extension is to last for five years. If the District fails to request renewal prior to the Agreement's termination, then the District shall submit a new notification with fees and required information to the Department. This Agreement shall be reviewed as necessary and prior to any renewal to ensure environmental conditions have not changed or that new provisions are not required to protect fish and wildlife or resolve conflict between the parties. Any activities conducted under an expired Agreement are a violation of Fish and Game Code 1601.
- D. The Department reserves the right to enter the work site at any time to confirm that CALTRANS is in compliance with the conditions contained in this agreement.

CONCURRENCE

Patricia Wolf
Department of Fish and Game
Regional Manager
Region 5

Orville Morgan
CALTRANS
Title Division Chief - State

Dated: 11-12-97

Dated: 10/31/97

